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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In re

Sean Daniel Schrader,

Debtor.

Vincent Wurster, an individual and
Tina Elston, an individual,

Plaintiff.

vs.

Sean Daniel Schrader,

Defendant.

Chapter 13

Case No. 17-30928-dwh13

Adversary Proceeding
No. 17-03086-dwh

ANSWER TO COMPLAINT

For Answer to the Complaint, Defendant admits, denies, and alleges as follows:

I. Admissions and Denials

Complaint Response
Paragraph

- | | |
|-----|--|
| 1,2 | Admits the allegations. |
| 3 | Denies the allegations. |
| 4 | Admits the allegations. |
| 5 | Denies that Debtor is doing business as Premiere Motors but admits that he
<u>formerly</u> did business as Premiere Motors. Debtor denies he ever resided in Lane
County but admits that the time of his petition filing the remainder of the
allegations are accurate. |

- 6 Admits Creditors lent money for the establishment of an automobile resale business. Defendant has insufficient information to admit or deny the remainder of the allegations.
- 7, 8 , 9, Denies the allegations.
- 10 Defendant has insufficient information to verify the accuracy of the date or actual statement set forth by Plaintiff and therefore denies.
- 11,12,13, Denies the allegations.
14
- 15 Statement asserted is a conclusion of law and is therefore neither admitted or denied.
- 16 No admission or denial required.
- 17 Defendant realleges the admissions and denials set forth above as to complaint paragraphs 1 through 16.
- 18,19 Denies the allegations and opposes the relief requested.
- 20 Defendant realleges the admissions and denials set forth above as to complaint paragraphs 1 through 19.
- 21, 22 Denies the allegations.

II. Affirmative Defenses

2.1 Failure to State a Claim/Statute of Frauds. Plaintiffs fail to state a claim for which relief may be granted in that Plaintiff's allegations fail to provide sufficient facts to support a finding of fraud, embezzlement or larceny, or that Defendant was acting in any fiduciary capacity with respect to Plaintiff. The allegations represent this was a general unsecured business investment that went unpaid. Under the Statute of Frauds, a contract which cannot be performed

within one year must be evidenced by a writing. No allegations of a promissory note or contract signed by Defendant on behalf of himself or a business have been made as none exist. Plaintiffs have not filed a proof of claim in the case with evidence to support their claim. The claims bar date for filing claims was July 10, 2017. Plaintiffs bare allegations are insufficient to support a claim under 11 USC §523(a)(4).

2.2 No False Promises: Defendant made no false representations of past or existing material fact to Plaintiffs, concealed no material facts from Plaintiffs, made no statement or promises with knowledge of their falsity, if any, made no false statements or promises with intent to induce Plaintiff's reliance on such statements or promises.

2.3 Failure to State a Claim/11 USC §523(a)(6). Plaintiffs seek relief under 11 U.S.C. §523(a)(6) alleging willful and malicious injury caused by Defendant. Defendant's case is a Chapter 13. The debt allegedly owed to Plaintiffs is not of the kind excepted from discharge in 11 U.S.C. §1328(a)(2). The §523 exceptions from discharge in Chapter 13 are enumerated as (1)(B), (1)(c), (2), (3), (4), (5), (8) or (9) of section 523(a). All others are dischargeable in Chapter 13. Plaintiffs claim therefore fails to state a claim upon which relief can be granted.

2.4 Action Barred. Plaintiffs Vincent Wurster and Christine ("Tina") Elston and their Counsel were duly scheduled and received the Clerk's notification of case commencement pursuant to §341(a) (Dkt 10, Certificate of Notice). The Clerk's notice indicated that the time period to file a Complaint for Dischargeability of a Debt was sixty days after the meeting of creditors, or June 12, 2017. Plaintiff's adversary proceeding was commenced on July 10, 2017 after the lapse of the bar date for commencement. Counsel for Plaintiff notified Counsel for Defendant of this position via email on July 18, 2017 and by phone on July 26, 2017. No Motion was filed requesting this Court extend the deadline to object to certain debts, nor a showing made of good cause or excusable neglect under F.R.B.P. 9006(b)(3). Such action is therefore barred as a matter of procedure and law.

III. Reservation of Rights to Allege Other Affirmative Defenses

3.1 Defendant reserves the right to assert any additional defenses that are supported by information or facts obtained through discovery or other means during this case and expressly reserves the right to amend his Answer to assert such additional affirmative defenses in the future.

3.2 Defendant consents to entry of final orders or judgment by the Bankruptcy Court under Rule 7012-1.

IV. Request for Relief

WHEREFORE, Defendant requests entry of orders for relief as follows:

- 4.1 For dismissal of Plaintiffs' Complaint and this action with prejudice;
- 4.2 For judgment against Plaintiffs for Defendant's fees and expenses in the event that Defendant becomes entitled to such relief; and
- 4.3 For such other and further relief as the Court shall determine to be equitable and proper.

Dated this 4th day of August, 2017.

/s/ Laura L. Donaldson

Laura L. Donaldson, OSB # 022930
Attorney for Defendant

CERTIFICATE OF SERVICE

On August 4, 2017, the undersigned served as indicated below, a true and correct copy of the Answer to Complaint by electronic service (ECF) and by first class US mail, postage prepaid, to the following persons, at the address indicated below:

Eric Helmy
NW Business Law LLC
750 NW Charbonneau Dr. Suite 108
Bend, OR 97701
Eric@nwbizlaw.com
Counsel for Plaintiffs Vincent Wurster and Tina Elston